



UNITED STATES
PATENT AND
TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE
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In re Application of	:
Tang et al	:
Serial No.: 09/747,524	: Decision on Petition
Filing Date: 19 December 2000	:
Attorney Docket No. PC-0022-CIP	:

This letter is in response to the Petition under 37 CFR 1.181, filed on 15 August 2003 and 22 September 2003, to vacate Notification of Non-compliance with 37 CFR 1.192(c). The delay in acting on this petition is regretted.

BACKGROUND

A review of the file history shows that the Office mailed a Final rejection on 2 January 2003.

Applicants filed a Notice of Appeal on 7 April 2003 and filed an Appeal Brief on 6 June 2003, concurrent with the filing of the Bedilion declaration under 37 CFR 1.132

On 16 July 2003, the Office mailed a Notification of Non-compliance with 37 CFR 1.192(c), stating that the Appeal Brief includes Declaration and references which do not comply with 37 CFR 1.195, entry of these will be denied as untimely, since good and sufficient reasons were not provided. The Notification also states that the brief will not be entered because a substantial portion relies upon arguments from the declaration and also contains references that are not of

record in the pending application.” No other errors were noted with the Appeal Brief.

This Petition was filed on 15 August 2003 and 22 September 2003.

DISCUSSION

The application, file history and petition have been considered carefully. The Petition does not request consideration of whether the Bedilion Declaration was timely, not does it supply good and sufficient reasons as to why the Declaration and evidence were submitted so late in prosecution. Accordingly, that issue will not be addressed in this decision.

The Petition requests vacation of the Notification of non-compliance with 37 CFR 1.192(c). The petition requests that the Office issue an Examiner’s Answer, whether or not the Bedilion Declaration is entered. In support of this request, the Petition states that the timeliness of the Bedilion Declaration does not serve as a basis for failing to meet the requirements of 37 CFR 1.192(c). In this argument, Applicants are correct. The Appeal brief complies with the requirements of 37 CFR 1.192(c) and as such, should be entered.

DECISION

The petition is **GRANTED**.

Timeliness of the Bedilion Declaration is not a valid reason for the Notification of Non-Compliance under 37 CFR 1.192(c), mailed 16 July 2003. As such, Paper No. 17, Notification of Non-Compliance under 37 CFR 1.192(c) has been vacated.

The application is being forwarded to the examiner for action consistent with this decision, i.e., preparation of an Examiner’s Answer to the Appeal Brief filed 6 June 2003, keeping in mind the guidance provided in the MPEP, section 1208.

“If an affidavit, declaration or exhibit was refused entry under 37 CFR 1.195, the examiner should not comment on it in the examiner’s answer.”

Should there be any questions with regard to this letter, please contact Special Program Examiner Julie Burke by letter addressed to the Director, Technology Center 1600, PO Box 1450, Alexandria VA 22313-1450 or by telephone at (703) 308-7553 or by facsimile transmission at (703) 308-7230.



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